

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ATLANTIC CASUALTY INSURANCE
COMPANY.

MEMORANDUM AND ORDER

Plaintiff,

CV 07-2174

-against-

(Wexler, J.)

W. PARK ASSOCIATES, INC., WEST PARK
BUILDERS, INC. ABRAHAM ALEJANDRO,
and R.A.C. DRYWALL, INC.,

Defendants.
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APPEARANCES:

NIXON PEABODY LLP
BY: SARAH S. KUTNER, ESQ.
Attorneys for Plaintiff
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753

CULLEN & DYKMAN LLP
BY: JEAN-PIERRE VAN LENT, ESQ.
Attorneys for Defendants W. Park Associates, Inc. And West Park Builders, Inc.
177 Montague Street
Brooklyn, New York 11201

WEXLER, District Judge

This is a declaratory judgment action brought by Plaintiff, Atlantic Casualty Insurance Company ("Atlantic Casualty" or "the Insurance Company"), seeking a judgment declaring that it is neither obligated to defend nor indemnify Defendant W. Park Associates, Inc. and West Park Builders Inc. (collectively "West Park") in connection with a personal injury action now pending

in New York State Supreme Court (the "State Court Action"). In a Memorandum and Order dated November 4, 2008, (the November 4 Opinion") this court granted the summary judgment motion of the Plaintiff. The November 4 Opinion granted Plaintiff's request for a declaratory judgment and held that American Casualty has neither the duty to defend nor indemnify West Park in connection with the State Court Action. The November 4 Opinion did not mention, however, that Defendant West Park had also moved for summary judgment, seeking the opposite relief as that sought by Atlantic Casualty, i.e. a judgment that there is a duty to defend and indemnify West Park in connection with the State Court Action

In light of the fact that the November 4 Opinion held that the exclusion at issue in the policy of insurance issued by Plaintiff relieved Atlantic Casualty of the obligation to defend and indemnify West Park, the court holds now that the motion of West Park for summary judgment is denied.

If it has not already been so noted, the Clerk of the Court is directed to enter judgment denying the motion of Defendant West Park for summary judgment (filed under document numbers 20 and 21) and to close the file in this matter.

SO ORDERED:

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LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Central Islip, New York
November 10, 2008